

Small Business Administration

§ 103.5

that any Agent supply written evidence of his or her authority to act on behalf of an Applicant, Participant, or lender as a condition of revealing any information about the Applicant's, Participant's, or lender's current or prior dealings with SBA.

§ 103.3 May SBA suspend or revoke an Agent's privilege?

The Administrator of SBA or designee may, for good cause, suspend or revoke the privilege of any Agent to conduct business with SBA. Part 134 of this chapter states the procedures for appealing the decision to suspend or revoke the privilege. The suspension or revocation remains in effect during the pendency of any administrative proceedings under part 134 of this chapter.

§ 103.4 What is "good cause" for suspension or revocation?

Any unlawful or unethical activity is good cause for suspension or revocation of the privilege to conduct business. This includes:

(a) Attempting to influence any employee of SBA or a lender, by gifts, bribes or other unlawful or unethical activity, with respect to any matter involving SBA assistance.

(b) Soliciting for the provision of services to an Applicant by another entity when there is an undisclosed business relationship between the two parties.

(c) Violating ethical guidelines which govern the profession or business of the Agent or which are published at any time by SBA.

(d) Implying or stating that the work to be performed for an Applicant will include use of political or other special influence with SBA. Examples include indicating that the entity is affiliated with or paid, endorsed or employed by SBA, advertising using the words *Small Business Administration* or *SBA* in a manner that implies SBA's endorsement or sponsorship, use of SBA's seal or symbol, and giving a "guaranty" to an Applicant that the application will be approved.

(e) Charging or proposing to charge any fee that does not bear a necessary and reasonable relationship to the services actually rendered or expenses actually incurred in connection with a

matter before SBA or which is materially inconsistent with the provisions of an applicable compensation agreement or Lender Service Provider agreement. A fee based solely on a percentage of a loan or guarantee amount can be reasonable, depending on the circumstances of a case and the services actually rendered.

(f) Engaging in any conduct indicating a lack of business integrity or business honesty, including debarment, criminal conviction, or civil judgment within the last seven years for fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, false statements, conspiracy, receiving stolen property, false claims, or obstruction of justice.

(g) Acting as both a Lender Service Provider or Referral Agent and a Packager for an Applicant on the same SBA business loan and receiving compensation for such activity from both the Applicant and lender. A limited exception to this "two master" prohibition exists when an Agent acts as a Packager and is compensated by the Applicant for packaging services; also acts as a Referral Agent and is compensated by the lender for those activities; discloses the referral activities to the Applicant; and discloses the packaging activities to the lender.

(h) Violating materially the terms of any compensation agreement or Lender Service Provider agreement provided for in § 103.5.

(i) Violating or assisting in the violation of any SBA regulations, policies, or procedures of which the Applicant has been made aware.

§ 103.5 How does SBA regulate an Agent's fees and provision of service?

(a) Any Applicant, Agent, or Packager must execute and provide to SBA a compensation agreement, and any Lender Service Provider must execute and provide to SBA a Lender Service Provider agreement. Each agreement governs the compensation charged for services rendered or to be rendered to the Applicant or lender in any matter involving SBA assistance. SBA provides the form of compensation agreement and a suggested form of Lender